

## REMARKS

The foregoing amendment is provided to remove issues for appeal and to present rejected claims in better form for allowance or consideration on appeal, rather than to avoid prior art.

Applicants respectfully request reconsideration of this application as amended. Claims 1-51 are pending in the application. Claims 28-33, 45-49 and 51 are rejected. Claims 1-10, 15-27 and 34-43 are allowed. Claims 28 and 51 are amended.

### Rejections under 35 U.S.C. §101

Claims 28-33, 45-49 and 51 are rejected under 35 U.S.C. §101, as allegedly being directed to non-statutory subject matter. The Final Office Action states that the claimed “article comprising a tangible machine readable medium that stores a program” fails to fall within a statutory category.

The Examiner argues that in the specification a machine-readable medium includes transmission media, e.g. carrier waves, and as such may merely recite a form of energy.

Applicant respectfully disagrees and believes that the best way to claim a tangible machine readable medium, is to set forth “a tangible machine readable medium,” in the claim language. But in order to comply with the Examiner’s assertion that the word tangible, has no legal meaning in the context of the present application, Applicant has amended the claims to set forth a Markush group, which does not include a carrier wave.

Thus Applicant respectfully submits that Claims 28-33, 45-49 and 51, as amended, are directed to statutory subject matter.

### CONCLUSION

Applicants respectfully submit the present claims for allowance. If the Examiner believes a telephone conference would expedite or assist in the allowance of the present application, the Examiner is invited to call Lawrence Mennemeier at (408) 765-2194.

Authorization is hereby given to charge our Deposit Account No. No. 50-0221 for any charges that may be due.

Respectfully submitted,

Date: June 8, 2008

/Lawrence M. Mennemeier/

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